

# Immigration and Naturalization Service, Justice

§ 245a.5

(3) Section 245a.5(a) shall not apply to benefits financed through the programs identified in §245a.5(c), which are marked with an asterisk (\*), except to the extent that such benefits:

(i) Consist of, or are financed by, financial assistance in the form of grants, wages, loan, loan guarantees, or otherwise, which is furnished by the Federal Government directly, or indirectly through a State or local government or a private entity, to eligible individuals or to private suppliers of goods or services to such individuals, or is furnished to a State or local government that provides to such individuals goods or services of a kind that is offered by private suppliers, and

(ii) Are targeted to individuals in financial need; either (A) in order to be eligible, individuals must establish that their income or wealth is below some maximum level, or, with respect to certain loan or loan guarantee programs, that they are unable to obtain financing from alternative sources, or at prevailing interest rates, or at rates that would permit the achievement of program goals, or (B) distribution of assistance is directed, geographically or otherwise, in a way that is intended to primarily benefit persons in financial need, as evidenced by references to such intent in the authorizing legislation.

(c) The programs of Federal financial assistance referred to in §245a.5(a) are those identified in the list set forth below. The General Services Administration (GSA) Program Numbers set forth in the right column of the program list refer to the program identification numbers used in the Catalog of Federal Domestic Assistance, published by the United States General Services Administration, as updated through December, 1986.

	GSA Program Num- bers
Department of Agriculture:	
Farm Operating Loans .....	10.406
Farm Ownership Loans .....	10.407
Department of Health and Human Services:	
Assistance Payments—Maintenance Assist-	
ance (Maintenance Assistance; Emergency	
Assistance; State Aid; Aid to Families with	
Dependent Children) .....	13.780
Low-Income Home Energy Assistance .....	13.789
*Community Services Block Grant .....	13.792

	GSA Program Num- bers
*Community Services Block Grant—Discre-	
tionary Awards .....	13.793
Department of Housing and Urban Development:	
Mortgage Insurance—Housing in Older, De-	
clining Areas (223(e)) .....	14.123
Mortgage Insurance—Special Credit Risks	
(237) .....	14.140
*Community Development Block Grants/Enti-	
tlement Grants .....	14.218
*Community Development Block Grants/Small	
Cities Program (Small Cities) .....	14.219
Section 312 Rehabilitation Loans (312) .....	14.220
*Urban development action grants .....	14.221
*Community Development Block Grants/	
State's Program .....	14.228
Section 221(d)(3) Mortgage Insurance for Mul-	
tifamily Rental Housing for Low and Mod-	
erate Income Families (Below Market Inter-	
est Rate) .....	14.136
Department of Labor:	
Senior Community Service Employment Pro-	
gram (SCSEP) .....	17.235
Office of Personnel Management:	
Federal Employment for Disadvantaged	
Youth—Part-Time (Stay-in-School Program)	
Federal Employment for Disadvantaged	
Youth—Summer (Summer Aides) .....	27.004
Small Business Administration:	
Small Business Loans (7(a) Loans) .....	59.012
Department of Energy:	
Weatherization Assistance for Low-Income	
Persons .....	81.042
Department of Education:	
Patricia Roberts Harris Fellowships (Graduate	
and Professional Study; Graduate and Pro-	
fessional Study Opportunity Fellowships;	
Public Service Education Fellowships) .....	84.094
Legal Training for the Disadvantaged (The	
American Bar Association Fund for Public	
Education) .....	84.136
Allen J. Ellender Fellowship Program (Ellender	
Fellowship) .....	84.148
Legal Services Corporation:	
Payments to Legal Services Corporation .....	.....

[54 FR 29437, July 12, 1989, as amended at 54 FR 49964, Dec. 4, 1989]

## PART 246—RESCISSION OF ADJUSTMENT OF STATUS

Sec.

246.1 Notice.

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AUTHORITY: 8 U.S.C. 1103, 1254, 1255, 1256, 1259.

## § 246.1

SOURCE: 27 FR 10789, Nov. 6, 1962, unless otherwise noted.

### **§ 246.1 Notice.**

If it appears to a district director that a person residing in his district was not in fact eligible for the adjustment of status made in his case, a proceeding shall be commenced by the personal service upon such person of a notice of intention to rescind which shall inform him of the allegations upon which it is intended to rescind the adjustment of his status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he may, within such period, request a hearing before a special inquiry officer in support of, or in lieu of his written answer. The respondent shall further be informed that he may have the assistance of or be represented by counsel or representative of his choice qualified under part 292 of this chapter, without expense of the Government, in the preparation of his answer or in connection with his hearing, and that he may present such evidence in his behalf as may be relevant to the rescission.

[28 FR 6737, June 29, 1963, as amended at 37 FR 11471, June 8, 1972]

### **§ 246.2 Allegations admitted; no answer filed; no hearing requested.**

If the answer admits all the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hearing is requested within such period, and the status of that of a permanent resident was acquired through suspension of deportation under section 19(c) of the Immigration Act of February 5, 1917, or under section 244 of the Immigration and Nationality Act, the district director shall forward the respondent's file containing a copy of the notice and the answer, if any, to the regional commissioner for further action in accordance with section 246 of the Immigration and Nationality Act. If the answer admits the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hear-

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ing is requested within such period, and the status of that of a permanent resident was acquired through adjustment of status under section 245 or 249 of the Immigration and Nationality Act, the district director shall rescind the adjustment of status previously granted, and no appeal shall lie from his decision.

### **§ 246.3 Allegations contested or denied; hearing requested.**

If, within the prescribed time following service of the notice pursuant to § 246.1, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to § 246.5 shall be conducted by a special inquiry officer and the procedures specified in §§ 242.10, 242.11, 242.12, 242.13, 242.14 (c), (d) and (e), and 242.15 of this chapter shall apply.

[29 FR 13243, Sept. 24, 1964]

### **§ 246.4 Special inquiry officer's authority; withdrawal and substitution.**

In any proceeding conducted under this part, the special inquiry officer shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to present and receive evidence, to determine whether adjustment of status shall be rescinded, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case. Nothing contained in this part shall be construed to diminish the authority conferred on special inquiry officers by the Act. The special inquiry officer assigned to conduct a hearing shall, at any time, withdraw if he deems himself disqualified. If a hearing has begun but no evidence has been adduced other than the notice and answer, if any, pursuant to §§ 246.1 and 246.2, or if a special inquiry officer becomes unavailable to complete his duties within a reasonable time, or if at any time the respondent consents to a substitution, another special inquiry officer may be assigned to complete the case. The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so.

**§ 246.5 Hearing.**

(a) *Trial attorney.* The Government shall be represented at the hearing by a trial attorney who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The trial attorney is authorized to appeal from a decision of the special inquiry officer pursuant to § 246.7 and to move for reopening or reconsideration pursuant to § 246.8.

(b) *Opening.* The special inquiry officer shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice qualified under part 292 of this chapter and require him to state then and there whether he desires representation; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(c) *Pleading by respondent.* The special inquiry officer shall require the respondent to state for the record whether he admits or denies the allegations contained in the notice, or any of them, and whether he concedes that his adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in his case should be rescinded under the allegations set forth in the notice, and the special inquiry officer is satisfied that no issues of law or fact remain, he may determine that rescission as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

**§ 246.6 Decision and order.**

The decision of the special inquiry officer may be oral or written. Except

when a determination of rescission is based on the respondent's admissions pursuant to § 246.5(c), the decision shall include a discussion of the evidence and findings as to rescission. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded. If status was adjusted through suspension of deportation, the rescission order shall further provide that the matter be referred to Congress pursuant to section 246 of the Immigration and Nationality Act. Service of the decision and finality of the order of the special inquiry officer shall be in accordance with, and as stated in §§ 242.19 (a) and (b) and 242.20 of this chapter.

**§ 246.7 Appeals.**

Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge under this part to the Board of Immigration Appeals. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR-26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

[61 FR 18910, Apr. 29, 1996; 61 FR 32924, June 26, 1996]

**§ 246.8 Reopening or reconsideration.**

Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirements of § 103.5 of this chapter. The special inquiry officer may upon his own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which he has made a decision, unless jurisdiction in the case is vested in the Board under part 3 of this chapter. A motion to reopen will not be granted by a special inquiry officer unless he is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing.

**§ 246.9 Surrender of Form I-151 or I-551.**

A respondent whose status as a permanent resident has been rescinded in

accordance with section 246 of the Immigration and Nationality Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken, the Form I-151 or I-551 issued to him at the time of the grant of permanent resident status.

[27 FR 10789, Nov. 6, 1962, as amended at 45 FR 32657, May 19, 1980]

## PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

Sec.

247.1 Scope of part.

247.11 Notice.

247.12 Disposition of case.

247.13 Disposition of Form I-508.

247.14 Surrender of documents.

AUTHORITY: Secs. 101, 103, 247, 66 Stat. 166, 173, 218; 8 U.S.C. 1101, 1103, 1257.

### § 247.1 Scope of part.

The provisions of this part apply to an alien who is lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(A) or (15)(G) of section 101(a) of the Act, and to his immediate family; also, an alien who was lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(E) of section 101(a) of the Act, and to his spouse and children.

[22 FR 9801, Dec. 6, 1957]

### § 247.11 Notice.

If it appears to a district director that an alien residing in his district, who was lawfully admitted for permanent residence, has an occupational status described in section 247 of the Act, he shall cause a notice on Form I-509 to be served on such alien by personal service informing him that it is proposed to adjust his status, unless the alien requests that he be permitted to retain his status as a resident alien and executes and files with such district director a Form I-508 (Waiver of

Rights, Privileges, Exemptions and Immunities) and, if a French national receiving salary from the French Republic, Form I-508F (election as to tax exemption under the Convention between the United States and the French Republic), within 10 days after service of the notice, or the alien, within such 10-day period, files with the district director a written answer under oath setting forth reasons why his status should not be adjusted. The notice shall also advise the person that he may, within such period and upon his request have an opportunity to appear in person, in support or in lieu of his written answer, before an immigration officer designated for that purpose. The person shall further be advised that he may have the assistance of counsel without expense to the Government of the United States in the preparation of his answer or in connection with such personal appearance, and may examine the evidence upon which it is proposed to base such adjustment.

[22 FR 9801, Dec. 6, 1957, as amended at 37 FR 11471, June 8, 1972]

### § 247.12 Disposition of case.

(a) *Allegations admitted or no answer filed.* If the waiver Form I-508 and, if applicable, Form I-508F is not filed by the alien within the time prescribed, and the answer admits the allegations in the notice, or no answer is filed, the district director shall place a notation on the notice describing the alien's adjusted nonimmigrant status and shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted and no appeal shall lie from such decision. Form I-94A shall be delivered to the alien and shall constitute notice to him of such adjustment. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status granted and shall be subject to such other terms and conditions, including the exaction of bond as the district director may deem appropriate.

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations made in the notice without requesting a personal appearance, or if a personal appearance